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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1709 OF 1995

State Bank of Travancore Plaintiff
versus
Ashish Enterprises & others Defendants

Mr.N.S.Fadia for plaintiff.

CORAM : A.M.KHANWILKAR, J.

DATE : 17th August 2007

PC :

1. None appears for the defendant though served. No written statement has been filed. This suit is placed under caption "undefended suit" in terms of order dated 21st June 2006. In spite of that the defendants have not chosen to appear or file written statement. Accordingly I proceed to pass order in exercise of power under Order VIII, Rule 10 of the CPC for the reasons mentioned hereinafter.

2. In substance, the plaintiffs case is that financial assistance was extended to defendants 1 and 2. It was agreed between the plaintiffs and

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defendant nos.1 and 2 that Cash Credit Hypothecation of Stock Facility will be granted to the defendants 1 and 2 up to a sum of Rs.50,000/-. In terms of the agreement documents were executed by defendants 1 and 2; such as Demand Promissory Note dated 9th October 1989, letter of continuing security dated 9th October 1989 and agreement for Hypothecation and Guarantee dated 9th October 1989 respectively. What is relevant to note for our purpose is that the Demand Promissory Note dated 9th October 1989 clearly mentions that Rs.50,000/- is payable together with interest thereon at the rate of one half percent below State Bank Advance Rate minimum 16.00 percent per annum, with quarterly rests, which was executed by defendants 1 and 2. The agreement of hypothecation executed by the defendants also spells out the terms and conditions on which financial facility was extended. Even the agreement of hypothecation refers to the agreed rate of interest as one half percent below S.B.A.R. (State Bank Advance Rate) Minimum 16 percent annum, effective rate 16 per cent per annum. According to the plaintiffs, defendants 3 and 4 stood guarantors. Defendant no.1 availed of the financial facility. However, failed to repay the amount. In the

circumstances, the plaintiffs ultimately issued legal notice which also remained unreplied though duly served. In this backdrop the present suit is filed for the following reliefs :-

> a) The Defendants jointly and severally be ordered and decreed to pay to the plaintiffs a sum of Rs.80,602.60 ps. being the amount due under the Cash Credit Hypothecated Account together with the further interest thereon at the rate of 16% p.a. with the quarterly rest from the date of the filing of the suit till payment and cost of an incidental to this suit and professional costs.
>
> b) that this Hon'ble Court be pleased to declare that there is a valid, binding and subsisting charge in favour of the Plaintiffs on the Hypothecated goods, more particularly described in Exhibit'C'.
>
> c) That this Hon'ble Court maybe pleased to order and decree the sale of the said hypothecated goods, more particularly described in exhibit 'C' hereto, by and under the direction of this Hon'ble Court and the next sale proceeds thereof be appropriated in or towards satisfaction of Plaintiffs claim in the suit as mentioned in prayer 'A' above.
>
> d) that in the event of net sale proceeds realised from the said hypothecated goods, found to be insufficient to cover the amount mentioned in prayer (a) above, the Defendants may be ordered and decreed to pay jointly and severally to the plaintiffs the amount of the said deficiency.
>
> e) that the pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as the Receiver of the said hypothecated goods, more particularly described in Exhibit 'C' with all the powers under XL rule 1

of Code of Civil Procedure 1908 including the power to take possession thereof and to sale the same and appropriate the next sale proceeds thereof in or towards repayment of the plaintiff claim in suit.

f) that the pending the hearing and final disposal of the suit the Defendant by themselves, their agents, servants or representatives be restrained by an order of injunction of this Hon'ble Court from in any way dealing with or disposing of or transferring or alienating, encumbering or parting with possession of the said hypothecated goods, more particularly described in Exhibit 'C' hereto or any part thereof.

g) that ad-interim reliefs in terms of prayer'E' & 'F' above be granted.

h) the cost of the suit including professional cost be provided for.

i) Such other and further reliefs as the nature and circumstances of the case may require and as this Honourable Court may deem fit and proper be granted."

3. As mentioned earlier, the defendants 1, 2 and 3 against whom the suit has been ordered to proceeded as an undefended suit, have not bothered to appear before this Court nor have filed any written statement. On the other hand, the plaintiffs to substantiate their claim in the plaint, have filed affidavit of evidence of Dattatraya B. Agawane, Manager of the plaintiff bank sworn on 25th July 2007. The case made out in the plaint is reiterated in the affidavit of evidence. Besides, the plaintiffs have relied on the original documents, such as sanction letter

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dated 9th October 1989 which spells out the terms and conditions on which financial facility was extended to defendants 1 and 2, original demand promissory note dated 9th October 1989 which bears the signature of defendant no.2 as proprietor of defendant no.1 firm, original copy of agreement for hypothecation and guarantee dated 9th October 1989. The plaintiffs have also relied upon the revival letter dated 24th February 1992 issued under signature of defendant no.2 for and on behalf of defendant no.1 firm addressed to the Manager given on Rs.10/- stamp paper. Besides, the plaintiffs have produced statement of account of defendant no.1 firm to substantiate their claim which shows that the total outstanding at the foot of the account as on 20th February 1995 i.e. at the time of institution of the suit was around Rs.80,602=60 Ps.. In other words, the plaintiffs have substantiated the fact that defendants 1 and 2 took financial assistance from the plaintiffs up to Rs.50,000/-. With regard to that arrangement the defendants 1 to 3 executed documents referred to above to acknowledge their liability to repay such amount on terms referred to in the agreement and the promissory note. The rate of interest claimed by the plaintiffs is also agreed rate of

interest between the parties given for commercial purpose. Accordingly, the plaintiffs are entitled for a decree against defendants 1 to 3 in terms of prayer clauses (a), (b), (c) and (d). Hence, I pass following order.

4. ORDER :

A) Accordingly, the suit is ordered to be decreed against defendant nos.1 to 3 in terms of prayer clauses (a) to (d) with costs;

B) Decree be drawn up on that basis against defendant nos.1 to 3.

(A.M.KHANWILKAR, J.)